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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE SEAGATE TECHNOLOGY LLC
LITIGATION

CONSOLIDATED ACTION

No. 3:16-cv-00523-JCS

**UPDATED JOINT CASE
MANAGEMENT STATEMENT**

Complaint filed: May 9, 2016

I. INTRODUCTORY STATEMENT

Pursuant to the Case Management and Pretrial Order (ECF 91), the parties to the above actions jointly submit this UPDATED JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER. This is the fourth such Case Management Statement: the first was filed with the Court (Whyte, J.) on June 30, 2016 (ECF 58); the second was filed on December 2, 2016 (ECF 89); and the third and was filed on February 3, 2017 (ECF 99).

II. JOINT CASE MANAGEMENT STATEMENT

1. Motions

Defendant filed its Motion to Dismiss on August 5, 2016. (ECF 68.) On February 9, 2017, the Court entered its order Granting in Part and Denying in Part Seagate's Motion to Dismiss Plaintiffs' Second Amended Complaint. Plaintiffs did not file a Third Amended Complaint. Seagate answered the Second Amended Complaint on March 24, 2017.

Seagate filed a Motion to Strike and for Judgment on the Pleadings on May 26, 2017. The Court issued its Order Regarding Motion to Strike and for Judgment on the Pleadings on August 25, 2017.

Plaintiffs filed their Motion for Class Certification on November 8, 2017. Seagate's opposition to Plaintiffs' Motion for Class Certification is due on December 8, 2017 and Plaintiffs' reply is due on January 5, 2018. The hearing on Plaintiffs' Motion for Class Certification is set for February 9, 2018 at 9:30 a.m.

2. Modification of Briefing Schedule

a. Plaintiffs' Position

On the parties' stipulation, on August 8, 2017, the Court set the current class certification briefing schedule provided above. (ECF 126.) For the first time, *after* the filing of plaintiffs' motion for class certification, Seagate proposed extending the briefing schedule.

This Court previously ruled that "[p]arties may file a stipulation to extend the class certification discovery deadlines, but they may not change the briefing schedule and hearing date on class certification." (ECF No. 102). Seagate now asks this Court to overrule its prior scheduling order, but presents no facts or reasons that have changed its circumstances since August. Certainly

Seagate was aware that plaintiffs would use experts (the identity of whom plaintiffs disclosed to Seagate months ago, as early as April 2017) in support of class certification. Moreover, plaintiffs have moved for certification of class based on narrowed theory of liability from the original complaint, greatly streamlining the issues in this case. Plaintiffs oppose an extension of the schedule and will work cooperatively with Seagate to schedule any expert depositions.

b. Defendant's Position:

The Court's original Case Management and Pretrial Order, entered December 15, 2016, provided a two-month period for expert discovery on class certification issues prior to the filing of Plaintiffs' class certification motion. (ECF 91.) That schedule was reiterated in a Stipulation and Order Amending Case Schedule entered February 16, 2017 (ECF 104), which included the briefing dates *but omitted the expert discovery dates*. Instead, the parties provided: "The Parties shall submit a revised schedule for the remaining pre-class certification dates set forth in ECF 91, after Plaintiffs' Third Amended Complaint is filed and any further pleadings motions are resolved or otherwise after the settlement conference currently scheduled for April 26, 2017." The schedule set forth in ECF No. 104 was later continued at Plaintiffs' request, to accommodate ongoing fact discovery. (ECF 126). In the course of completing that discovery, the parties neglected to submit the revised schedule for expert discovery promised in ECF 104.

Plaintiffs filed their class certification motion on November 8, 2017 with the declarations of a damages expert, Mr. Boedeker, and a technical expert, Mr. Hospodor. No expert report was previously produced, and neither has been deposed. Plaintiffs note that they disclosed the names of several experts in order to provide them with documents under the protective order. Of course, Seagate had no idea what they might say or even whether they were merits or class certification experts. They address complex matters. Mr. Boedeker, in particular, testifies to empirical studies he performed in support of his damages theory that will need to be reviewed and rebutted by Seagate's expert, and both experts will need to be deposed. That is what the original class certification schedule contemplated. Especially in light of the upcoming holiday, it is unrealistic to expect that process, and the required briefing, to be completed in four weeks. Seagate asks for a four-week

1 continuance, until January 5, 2018. The parties and the Court can address the reply and hearing dates
2 at the upcoming Case Management Conference.¹

3 **3. Related Cases**

4 As previously reported by the parties, a putative class action containing similar allegations
5 about Seagate's 3TB hard drives is currently pending before Judge Karnow in San Francisco
6 Superior Court, *Pozar v. Seagate Technology LLC*, CGC-15-547787 (filed September 4, 2015)
7 (alleging California class). On November 1, 2017 Judge Karnow certified a California class under
8 UCL and CLRA based on omissions. To the extent feasible, to avoid duplication and promote
9 efficiency, the parties here have agreed to informally coordinate discovery with the *Pozar* matter.
10 *Pozar* counsel participated in a number of depositions and discovery meet-and-confers, and in the
11 settlement conference held with Magistrate Judge Corley on April 26, 2017.

12 **4. Status of Discovery**

13 As previously reported, the parties reached agreements on the protective order and ESI
14 protocol, which the Court approved (ECF 59 (protective order); ECF 73 (ESI protocol)). Each of the
15 parties has served discovery requests and responded. Each of the named plaintiffs has been deposed,
16 as have seven current or former Seagate employees. Only two discovery disputes have required
17 Court intervention. Seagate was required to produce all documents concerning products containing
18 the ST3000DM001 hard drive. That production remains ongoing. The Court ordered the parties to
19 attempt to reach a negotiated solution regarding the location of the deposition of Dudley Dortch,
20 which the parties did.

21 **5. Other**

22 On January 25, 2017 this Court entered a Notice and Order Regarding Settlement
23 Conference. (ECF 97.) The parties participated in a conference with Magistrate Judge Corley on
24 April 26, 2017 at 11:00 a.m. (ECF 98.). Follow-on communications continue.

26 ¹ Seagate does not interpret the Court's Minute Order, ECF. No. 102, as a prohibition on further
27 continuances of the class certification hearing date. The Court instructed the parties they could not
28 *stipulate* to such a continuance without Court approval. Seagate is asking for Court approval based
on a showing of good cause.

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2 DATED: November 10, 2017

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A Limited Liability Partnership
Including Professional Corporations

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Steve W. Berman, am the ECF User whose identification and password are being used to file this Updated Joint Case Management Statement and [Proposed] Order. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that all signatories have concurred in this filing.

Dated: November 10, 2017

By: /s/ Steve W. Berman

Steve W. Berman